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Patent Application
Attorney Docket No.: 62684.000002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:

Edward Federowicz

Appln. No.: 09/851,208

Filed: May 7, 2001

For: PATIENT LEVITATION APPARATUS FOR
PATIENT TRANSFER OR LINEN CHANGING

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: Group Art Unit: 3673
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:
: Examiner: Frederick C. Conley
:
:

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL

Sir:

Submitted herewith is an Appeal Brief (in triplicate) for the above-identified patent application.

- ☐ No additional fee is required.
- ☒ Also attached: A check in the amount of \$250.00, and Return Receipt Postcard.

[X] The fee is calculated as shown below:

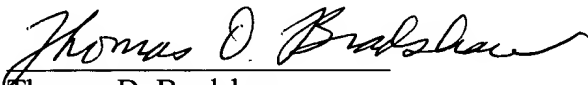
	PRESENT # OF CLAIMS	HIGHEST # PREVIOUSLY PAID FOR	EXTRA CLAIMS	RATE	FEE
Total Claims	5	20	0	x \$50 =	\$.00
Independent Claims	3	3	0	x \$200 =	\$.00
Multiple Dependent Claims Fee					\$.00
Appeal Brief Filing Fee					\$500.00
Subtotal					\$500.00
Subtract ½ if Small Entity					\$250.00
TOTAL FEE DUE					\$250.00

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Respectfully submitted,

Hunton & Williams LLP

By: 
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STOP APPEAL BRIEFS-PATENT

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METHOD OF PAYMENT (check all that apply)

☐ Deposit Account Deposit Account Number 50-0206 Deposit Account Name : Hunton & Williams, LLP

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<input checked="" type="checkbox"/> Charge fee(s) indicated below.	<input checked="" type="checkbox"/> Charge fee(s) indicated below, except for the filing fee
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FEE CALCULATION

1. BASIC FILING, SEARCH AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee(\$)	Small Entity Fee (\$)	Fee(\$)	Small Entity Fee (\$)	Fee(\$)	Small Entity Fee (\$)	
Utility	300.00	150.00	500.00	250.00	200.00	100.00	
Design	200.00	100.00	100.00	50.00	130.00	65.00	
Plant	200.00	100.00	300.00	150.00	160.00	80.00	
Reissue	300.00	150.00	500.00	250.00	600.00	300.00	
Provisional	200.00	100.00	0.00	0.00	0.00	0.00	

2. EXCESS CLAIMS FEES

		Highest Number			Small Entity	
<u>For</u>	<u>Number Present</u>	<u>Paid For</u>	<u>Extra</u>	<u>Fees (\$)</u>	<u>Fee (\$)</u>	<u>Fees Paid (\$)</u>
Total Claims		20	0 x	50.00	25.00	
Independent Claims		3	0 x	200.00	100.00	
Multiple Dependent Claim				360.00	180.00	
Total Excess Claims Fees						

3. **APPLICATION SIZE FEE** (if the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

<u>Total Sheets</u>	<u>Extra Sheets</u>	<u>No. of Each Additional 50 or Fraction Thereof</u>	<u>Fees (\$)</u>	<u>Small Entity Fee (\$)</u>	<u>Fees Paid (\$)</u>
- 100 =	/ 50 =	(round up to a whole number) x	250.00	125.00	

4. OTHER FEE(S)

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| <input type="checkbox"/> Non-English Specification (no small entity discount) | <input type="checkbox"/> Utility Issue Fee (or Reissue) (including Publication Fee, if necessary) |
| <input type="checkbox"/> Surcharge - late filing fee or oath | <input type="checkbox"/> Design Issue Fee |
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| <input type="checkbox"/> _____ Month Extension of Time | <input type="checkbox"/> Petition to Commissioner |
| <input type="checkbox"/> Submission of Information Disclosure Statement | <input type="checkbox"/> Petition to Revive (Unavoidable) |
| <input type="checkbox"/> Notice of Appeal | <input type="checkbox"/> Petition to Revive (Unintentional) |
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| <input checked="" type="checkbox"/> Filing Brief in Support of Appeal \$250 | <input type="checkbox"/> Recording Each Patent Assignment Per Property |
| <input type="checkbox"/> Filing Submission After Final Rejection | <input type="checkbox"/> Other (specify) _____ |

SUBMITTED BY

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Typed or Printed Name	Thomas D. Bradshaw			Date	June 20, 2005



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APPEAL BRIEF

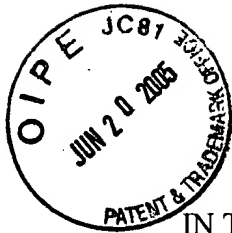
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APPEAL BRIEF

In response to the Office Action dated October 19, 2004, finally rejecting pending claims 4, 5, and 7-9, appellant respectfully requests that the Board of Patent Appeals and Interferences reconsider and withdraw the sole rejection of record, and allow the pending claims, which are attached hereto as an Appendix.

I. REAL PARTY IN INTEREST

The real party in interest is Edward Federowicz, the applicant and owner of the above-referenced application.

II. RELATED APPEALS AND INTERFERENCES

To the best of appellant's knowledge, there are no related Appeals or Interferences.

III. STATUS OF CLAIMS

Claims 4, 5, and 7-9 are pending in this application. The rejection of claims 4, 5, and 7-9 are appealed.

IV. STATUS OF AMENDMENTS

No amendments to the claims have been filed subsequent to the final rejection dated October 19, 2004.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Appellant believes that a brief discussion of the background technology, followed by a brief summary of various embodiments of the present invention and the problems solved by the embodiments of the present invention, will assist the Board of Patent Appeals and Interferences (hereinafter referred to as “the Board”) in appreciating the significant advances made by the embodiments of the present invention.

All citations to Applicant’s Patent Application are in reference to the substitute specification attached to Applicant’s Amendment/Response dated November 4, 2002.

A. Background

Hospitalized pre and post operative patients are generally subjected to great pain and discomfort when they are required to be moved from their bed to a gurney and from a gurney to an examination table for an X-ray, Cat Scan, MIR, etc. Currently they are dragged, lifted, or shoved from one device to the other, in most cases by three, four or more attendants. These attendants often suffer lower back pain and back injuries from the intensive lifting and transfer of patients. The lifting and transfer of patients is often uncomfortable for the patients, who typically already suffer other medical pain or discomfort.

B. Systems and Embodiments Of The Present Invention

Embodiments of the invention are directed to a patient levitation apparatus for a patient comprising a patient board having a patient side and a bottom. The patient board is approved for use in a hospital. A plenum member is attached to the bottom of the patient board. The plenum member is adapted to receive a flow of pressurized air through an intake port. The patient board has an intake port hole adapted for receiving the intake port. The plenum member is further adapted to release the flow through a plurality of holes in the plenum member to provide a layer of air below the patient board supporting the patient. (*See Application, page 1.*)

Figures 1, 2, and 3 show a front perspective view, side view, and bottom view, respectively, of an embodiment of the invention. In one embodiment, a small blower motor supplies pressurized air into the apparatus, e.g., through a hose connected to an intake port sleeve 46 at the foot of the board 20. (*See Application, p. 3.*) The pressurized air travels through the intake port sleeve 46 into the plenum (an enclosure in which air or other gas is at a pressure

greater than that of the outside atmosphere). The pressurized air in the plenum member 40 slowly escapes from tiny holes 48 in the plenum 40. (*See Application*, p. 4 and Figure 3.) The escape of the air through the holes in a uniform and controlled pattern causes the patient board 20 and up to a four hundred (400) pound patient to be levitated on a cushion of air that exists between the levitated patient and the examination table, bed, gurney, or other solid apparatus. (*See Application*, p. 3).

Accordingly, the patient levitation apparatus enables hospital attendants to move patients from a hospital bed to a gurney or examination table on a cushion of air with only the slightest physical exertion. This minimizes discomfort to the patient and back pain and injury to the hospital attendant. Importantly, it also enables a single attendant to transport a patient instead of requiring up to four or more hospital attendants to move one patient. In this way, the patient levitation apparatus dramatically increases the productivity of a single attendant and dramatically reduces the resources required to move a single patient. One advantage is that a patient's soiled bedding can be changed more easily and therefore more often, thereby improving the patient's surroundings. (*See Application*, pp. 4-5.) Also, by dramatically reducing the costs and resources required to move a patient, e.g., to conduct a medical test, the costs of such tests may decrease and become more affordable to patients and insurance providers.

Other support for embodiments described in the claims can be found at page 2, lines 6-8 and 9-11; page 4, lines 19-20; and page 5, lines 2-6.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

There is one ground of rejection to be reviewed on appeal:

- Claims 4, 5, and 7-9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4, 417, 638 to Harvey (the "Harvey Patent").

VII. ARGUMENT

Claims 4, 5, and 7-9 stand rejected as being anticipated by the Harvey Patent. Specifically, with respect to claims 4, 5, 7, and 8, the Harvey Patent does not teach, inherently or explicitly, a "patient board approved for use in a hospital" as recited in claims 4 and 8 and

incorporated in claims 5 and 7. With respect to claim 9, the Harvey Patent does not teach, inherently or explicitly, a “patient board adapted for use on a hospital bed” as recited in claim 9.

A. The Harvey Patent Does Not Disclose Claims 4, 5, and 7-9

The rejection of claims 4, 5, and 7-9 under 35 U.S.C. § 102(b) as being anticipated by the Harvey Patent is improper.

The Harvey Patent

The Harvey Patent is directed to an air inlet and air dispersion grommet for an air pallet material handling system. According to the Harvey Patent, the system includes a planar rigid backing member and a thin flexible sheet member including a bottom portion bearing perforations. The sheet member forms a plenum chamber for retaining pressurized air between the bottom portion of the sheet member and the backing member. The grommet is mounted to the backing member, and comprises a hollow annular body sealably fixed to the backing member, and opening to the plenum chamber. Air is inserted through the grommet and into the plenum chamber to create a thin air film for supporting a load for frictionless movement over an underlying supporting surface.

1. Claims 4, 5, 7, and 8

a. The Harvey Patent does not disclose a “patient board approved for use in a hospital”

Independent claim 4 is directed to a patient levitation apparatus for a patient comprising a patient board having a patient side and a bottom. The patient board is approved for use in a hospital. A plenum member is attached to the bottom of the patient board. The plenum member is adapted to receive a flow of pressurized air through an intake port. The patient board has an intake port hole adapted for receiving the intake port. The plenum member is further adapted to release the flow through a plurality of holes in the plenum member to provide a layer of air below the patient board supporting the patient. Claims 5 and 7 depend from claim 4 and incorporate its recitations by reference.

Independent claim 8 is directed to a patient levitation apparatus for a patient comprising a patient board having a patient side and a bottom. The patient board is approved for use in a hospital. A plenum member attached to the bottom of the patient board is adapted to receive a

flow of pressurized air. The plenum member is also adapted to release the flow downwardly through a plurality of holes in the plenum member to provide a layer of air below the patient board supporting the patient.

Notably, independent claims 4 and 8 recite a “patient board approved for use in a hospital,” and dependent claims 5 and 7 incorporate this feature by reference.

It is well settled that for a claim to be anticipated, each and every element of that claim must be shown in a prior art reference, either explicitly or under principles of inherency. In re Schreiber, 128 F.3d 1473, 1477 (Fed. Cir. 1997).

The present invention differs from Harvey, at the very least, in that the present invention provides a patient board approved for use in a hospital. As described in Applicant’s specification, “patient board 20 is a substantially rigid 50” to 72” by 20” to 22”, three-eighths or quarter inch thick [or other similar dimensions], plastic board that is approved for hospital use.... A patient may be placed on patient board 20 by rolling the patient onto their side while board 20 is placed beneath the patient and which the patient then rolls back onto patient side 22 of board 20.” (See Application, page 2.) The Application also states that the patient board is adapted for transferring patients from one location to another, such as from a bed to an examination table.

Harvey simply states that rigid backing member 22 may constitute a rectangular plywood sheet. Harvey does not disclose, teach or suggest that backing member 22 can have a size or shape that is suitable for transporting a patient comfortably. A rectangular plywood sheet, by itself, would not be suitable for transporting hospital patients who may have bedsores and other physical ailments. Nor does Harvey disclose, teach or suggest that backing member 22 is approved for use in a hospital. This difference facilitates the use of the claimed system in a hospital context.

Furthermore, claims 4, 5, 7, and 8 recite or incorporate the feature that the “patient board support[s] the patient.” Harvey does not disclose, teach or suggest supporting a patient with a patient board.

Applicant submits that Applicant’s patient levitation assembly would not have been obvious to a skilled artisan familiar with the teachings of Harvey. However, the issue of

obviousness is not being considered on appeal. Rather, the only issue before the Board is whether the Harvey Patent anticipates all of the elements of claims 4, 5, and 7-9.

Thus, Applicant respectfully submits that the rejection of claims 4 and 8 under 35 U.S.C. §102(b) as purportedly being anticipated by Harvey should be withdrawn. For the same reasons, the rejections of claims 5 and 7, which depend on claim 4, should be withdrawn.

2. Claim 9

- a. The Harvey Patent does not disclose or suggest a “patient board adapted for use on a hospital bed”

Claim 9 recites a patient levitation apparatus for a patient. A patient board has a patient side and a bottom. Importantly, the “patient board [is] adapted for use on a hospital bed.” A plenum member is attached to the bottom of the patient board. The plenum member is adapted to receive a flow of pressurized air and release the flow downwardly through a plurality of holes in the plenum member to provide a layer of air below the patient board supporting the patient.

Claim 9 differs from Harvey, at the very least, in that it provides a “patient board adapted for use on a hospital bed,” whereas Harvey simply states that rigid backing member 22 may constitute a rectangular plywood sheet. Harvey does not disclose, teach or suggest that backing member 22 is adapted for use on a hospital bed. This difference facilitates the use of the claimed system in a hospital context. Applicant, therefore, respectfully submits that claim 9 is in condition for allowance.

Furthermore, claim 9 recites that the “patient board support[s] the patient.” Harvey does not disclose, teach or suggest supporting a patient with a patient board.

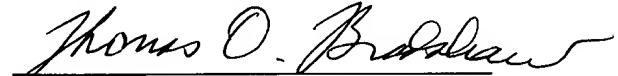
For at least these reasons, the Harvey Patent does not disclose or suggest the elements of claim 9.

VIII. CONCLUSION

In view of the foregoing, appellant respectfully requests that the Board reverse the prior art rejections set forth in the Office Action, and allow all of the pending claims.

June 20, 2005

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas D. Bradshaw", written over a horizontal line.

Thomas D. Bradshaw
Registration No. 51,492

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APPENDIX A - Pending Claims

What is claimed is:

1-4. (Canceled)

4. A patient levitation apparatus for a patient comprising:

a patient board having a patient side and a bottom, the patient board approved for use in a hospital; and

a plenum member attached to the bottom of the patient board, wherein the plenum member is adapted to receive a flow of pressurized air through an intake port, the patient board having an intake port hole adapted for receiving the intake port, and the plenum member further adapted to release the flow through a plurality of holes in the plenum member to provide a layer of air below the patient board supporting the patient.

5. The patient levitation apparatus of claim 4, wherein the plenum member further includes an intake port for receiving the flow of pressurized air.

6. (Canceled)

7. The patient levitation apparatus of claim 4, wherein the flow of pressurized air is delivered from a blower motor through an air hose.

8. A patient levitation apparatus for a patient comprising:

a patient board having a patient side and a bottom, the patient board approved for use in a hospital; and

a plenum member attached to the bottom of the patient board, wherein the plenum member is adapted to receive a flow of pressurized air and release the flow downwardly through a plurality of holes in the plenum member to provide a layer of air below the patient board supporting the patient.

9. A patient levitation apparatus for a patient comprising:

a patient board having a patient side and a bottom, the patient board adapted for use on a hospital bed; and

a plenum member attached to the bottom of the patient board, wherein the plenum member is adapted to receive a flow of pressurized air and release the flow downwardly through a plurality of holes in the plenum member to provide a layer of air below the patient board supporting the patient.